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DECISION OF THE DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 292, AFL-CIO, a labor organization,
Plaintiff and Counter Defendant,

-VS-

WER-COY FABRICATION COMPANY, INC., a Michigan Corporation,
Defendant and Counter Plaintiff.

Case No. 81-71144

HONORABLE JOHN FEIKENS

ORDER

At a session of said Court held in the Federal Courthouse, Detroit, Michigan on July 7, 1981

PRESENT: Hon. John Feikens
U. S. District Judge

This matter having come on to be heard on July 7, 1981, on plaintiff's Motion for Summary Judgment on the Complaint and Summary Judgment of Dismissal on a Portion of the Counterclaim and on defendant's Motion for Summary Judgment, and the Court having considered the pleadings filed herein and the arguments of attorneys for both parties and being fully advised in the premises, it is

ORDERED, that defendant's cross-motion for summary judgment be and the same hereby is denied, and it is further

ORDERED, that plaintiff's motion for summary judgment on the complaint and summary judgment of dismissal on that portion of the counterclaim which purports to state a claim under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, for plaintiff's alleged breach of its collective bargaining agreement be and same hereby is, in all respects, granted, and it is further

ORDERED, pursuant to Rule 54(b) F.R.C.P., that final judgment be entered upon the complaint and that portion of the counterclaim which purports to state a claim for damages under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, for plaintiff's alleged breach of its collective bargaining agreement and the undersigned expressly determines that there is no just reason for delay in the entry of final judgment on this order.

(s) John Feikens
United States District Judge

DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 81-1514
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 292, AFL-CIO, a labor organization,
Plaintiff/Counter Defendant-Appellee,

v.

WER-COY FABRICATION COMPANY, INC., a Michigan corporation,
Defendant/Counter Plaintiff-Appellant.

ORDER
(Filed: October 22, 1982)

Before: ENGEL and KEITH, Circuit Judges; and HOGAN, Senior District Judge*

Wer-Coy Fabrication Company, Inc. appeals a final judgment of the district court, entered pursuant to Federal Rule of Civil Procedure 54(b), enforcing an arbitrator's award which directs the immediate reinstatement with back wages of Anthony Dubich, a Union steward who was discharged from employment August 5, 1980. The company has alleged before the district court and here that the award was not within the power of the arbitrator whom the parties chose to resolve the grievance. The company has further claimed that it was error for the trial judge to have entered a summary judgment without first permitting the company to introduce evidence that Section 5(J) of the collective bargaining agreement was violative of the National Labor Relations Act.

* Hon. Timothy J. Hogan, Senior Judge, U.S. District Court for the Southern District of Ohio, sitting by designation.

The court is of the opinion that the district court did not err in granting summary judgment under the circumstances here. It is apparent that the decision of the arbitrator drew its essence from the collective bargaining agreement in holding that Section 5(J) made grievable and arbitrable the question whether the steward's termination was without just cause. Further, the company's reliance upon *Perma-Line* v. *Painters Local 230*, 689 F.2d 890 (2d Cir. 1981), is misplaced. Whatever may be the validity of that decision, it is apparent that the circumstances therein are far different from those in the present case. The individualized provisions made under this contract with respect to shop or job stewards conferred neither any such seniority nor other economic benefit, but were narrowly tailored to provide a neutral and mutually satisfactory means of protecting an employee from discrimination because of his assumption of responsibility in the Union. Accordingly,

IT IS ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT
(s) John P. Hehman
Clerk

SECTION 5(k) OF THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ASSOCIATED METAL FABRICATORS AND ENGINEERS AND S.M.W.I.A. LOCAL UNION 292

Section 5. STEWARDS

* * *

K. The Employer shall notify the Union office seventy-two (72) hours, excluding Saturday, Sunday and holidays, prior to the discharge of a shop or job steward for cause. The Union will investigate (within the seventy-two (72) hour period) and determine the discharge of any steward for cause.

* * *

Excerpt from Transcript of July 7, 1981

UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHEET METALWORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 292, AFL-CIO, a labor organization,
Plaintiff,

-vs-

Civil Action No. 1-71144

WER-COY FABRICATION COMPANY, INC., a Michigan corporation,
Defendant.

EXCERPT FROM THE TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE JOHN FEIKENS ON TUESDAY, JULY 7, 1981

Proceedings had in the above-entitled cause before the HONORABLE JOHN FEIKEN, Chief United States District Judge, at Detroit, Michigan, on Tuesday, July 7, 1981, commencing at or about the hour of 3:00 P.M.

APPEARANCES:

MARSTON, SACHS, NUNN, KATES, KADUSHIN & O'HARE, P.C.
BY: Ann E. Neydon, Esq.
1000 Farmer Street
Detroit, Michigan 48226 (313) 965-3464
appearing on behalf of Plaintiff.

FIOTT & NOVARA, P.C.
BY: Kenneth J. Fiott, Esq.
One Parklane Boulevard
Parklane Towers West, Suite 1427
Dearborn, Michigan 48126 (313) 336-4465
appearing on behalf of Defendant.

Excerpt from Transcript of July 7, 1981

THE COURT: In this case the Plaintiff has brought an action under the Labor Management Relations Act, 29 USC 185 to enforce an arbitration award. Defendant counterclaims for damages resulting from the Union's violation of the no-strike clause, unfair labor practices, first under Section 301, the second under Section 303. The Plaintiff moves for Summary Judgment on its claim, and on Defendant's Section 301 claim. Defendant moves for Summary Judgment on Plaintiff's claim only.

Now, with regard to the Plaintiff's claim, the enforcement of the arbitration award, it is settled law that arbitration awards are heavily favored.

In these cases the Defendant put three arguments as to why it should not be enforced. Initially the Defendant raises that the issue of just cause was not submitted to arbitration. But I think that this is not sustained by the record in the case and the colloquoy in which I have just engaged with Defendant's counsel, in which it appears that the issue was raised before the arbitrator, and, indeed, was briefed.

Defendant says that the award was not based on evidence. The arbitrator's opinion is attached to the file, and reference to it at pages 19 and 20 makes it clear that the arbitrator is saying that the discharge occurred in the midst of a confusing confrontation without substantial proof of justification, the arbitrator ruled that the Defendant did not meet the burden of proving just cause.

So, it appears that the arbitrator's conclusion comes from the contract, and it was based on evidence submitted at the hearing.

The third point that the Defendant raises is that the award is based on an illegal interpretation of the contract. While this may be a bit more troublesome, I think that the presumption in favor of the arbitrator's award should be indulged.

Excerpt from Transcript of July 7, 1981

And to define here that the sentence in the arbitrator's award ought to be construed as an illegal interpretation of the contract, that, I do not believe has merit.

Plaintiff also argues that Defendant's 301 claim should be the subject of summary judgment. And again here it would appear that both the employer as well as the Union must exhaust grievance procedures before bringing 301 suits into this Court.

Thus, I rule that summary judgment should be granted for Plaintiff on its claim for specific performance of the arbitration award, and that claim one of the Defendant's Counter-Claim should be dismissed without prejudice for failure to exhaust any contract remedies.

Count two of the Counter-Claim is not involved in these Motions.

You may have an Order.

REPORTER'S CERTIFICATE

I, ROSS L. PALMER, Official Court Reporter for the United States District Court for the Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code Section 753, do hereby certify that the foregoing is a full, true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

(s) ROSS L. PALMER

DATED: Detroit, Michigan
September 8, 1981